

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

HOUSE BILL 614
RATIFIED BILL

AN ACT TO PROVIDE THAT AGRICULTURAL AND FORESTRY OPERATIONS ARE NOT NUISANCES UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE AWARD OF COSTS AND ATTORNEYS' FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-701 reads as rewritten:

"§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in or about the locality outside of the operation.

(a) No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality ~~thereof~~ outside of the operation after the same operation has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; ~~provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances.~~ began.

(a1) The provisions of subsection (a) of this section shall not apply when the plaintiff demonstrates that the agricultural or forestry operation has undergone a fundamental change. A fundamental change to the operation does not include any of the following:

- (1) A change in ownership or size.
- (2) An interruption of farming for a period of no more than three years.
- (3) Participation in a government-sponsored agricultural program.
- (4) Employment of new technology.
- (5) A change in the type of agricultural or forestry product produced.

(a2) The provisions of subsection (a) of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural or forestry operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of ~~trees, but not sawmill operations.~~ trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.



(f) In a nuisance action against an agricultural or forestry operation, the court shall award costs and expenses, including reasonable attorneys' fees, to:

- (1) The agricultural or forestry operation when the court finds the operation was not a nuisance and the nuisance action was frivolous or malicious; or
- (2) The plaintiff when the court finds the agricultural or forestry operation was a nuisance and the operation asserted an affirmative defense in the nuisance action that was frivolous and malicious."

SECTION 2. G.S. 7A-38.3(h) reads as rewritten:

"§ 7A-38.3. Prelitigation mediation of farm nuisance disputes.

...
(h) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a farm nuisance dispute, including any Any applicable statutes of limitations, limitations relating to a farm nuisance dispute shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section. The filing of a request for prelitigation mediation under subsection (d) of this section does not constitute the commencement or the bringing of an action involving a farm nuisance dispute."

SECTION 3. This act is effective when it becomes law and applies to actions commenced or brought on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 2013.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____ .m. this _____ day of _____, 2013